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8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. *2013-419*

12 **WARREN LESTER FRANKLIN**
13 **P. O. Box 8442**
Newport Beach, CA 92658

A C C U S A T I O N

14 **Registered Nurse License No. 357094**

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
20 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
21 Consumer Affairs.

22 2. On or about March 31, 1983, the Board of Registered Nursing issued Registered
23 Nurse License Number 357094 to Warren Lester Franklin (Respondent). The Registered Nurse
24 License was in full force and effect at all times relevant to the charges brought herein and will
25 expire on December 31, 2012, unless renewed.

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1 **JURISDICTION**

2 3. This Accusation is brought before the Board of Registered Nursing (Board),
3 Department of Consumer Affairs, under the authority of the following laws. All section
4 references are to the Business and Professions Code unless otherwise indicated.

5 4. Section 2750 of the Business and Professions Code (Code) provides, in pertinent part,
6 that the Board may discipline any licensee, including a licensee holding a temporary or an
7 inactive license, for any reason provided in Article 3 (commencing with section 2750) of the
8 Nursing Practice Act.

9 5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license
10 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the
11 licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the
12 Code, the Board may renew an expired license at any time within eight years after the expiration.

13 **STATUTORY AND REGULATORY PROVISIONS**

14 6. Section 2761 of the Code states:

15 "The board may take disciplinary action against a certified or licensed nurse or deny an
16 application for a certificate or license for any of the following:

17 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

18 "(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing
19 functions....

20 7. Title 16, California Code of Regulations, section 1442, states:

21 "As used in Section 2761 of the code, 'gross negligence' includes an extreme departure from
22 the standard of care which, under similar circumstances, would have ordinarily been exercised by
23 a competent registered nurse. Such an extreme departure means the repeated failure to provide
24 nursing care as required or failure to provide care or to exercise ordinary precaution in a single
25 situation which the nurse knew, or should have known, could have jeopardized the client's health
26 or life."

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COST RECOVERY

8. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case, with failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

FACTS

9. Respondent was employed by Nurse Staffing of Santa Ana as a registry nurse. On May 13, 2011, he was assigned to work the night shift in the Intensive Care Unit ("ICU") of Saddleback Memorial Center. C.G. was also a registry nurse assigned to work in the ICU that night.

10. C.G. asked Respondent to help her clean up her patient, Patient #1, who had explosive diarrhea. Patient #1 was a chronically ill 53 year old patient who was admitted for liver and multisystem organ failure. She was receiving the medication Lactulose, tube feedings were providing her with nutrition and she was in isolation for clostridium difficile infection. Patient #1 was confused, sedated and in restraints due to her agitation.

11. C.G. was standing on Patient #1's right when Respondent entered the room to assist C.G. Respondent went to the patient's left side. First they turned Patient #1 towards Respondent so that C.G. could clean her on her right side and change the linens on this side of the bed. After cleaning the patient's right side, they rolled Patient #1 towards Respondent so that Respondent could clean Patient #1's left side and the linens. However, after cleaning Patient #1's left side, the patient defecated again.

12. C.G. and Respondent cleaned Patient #1 again following the same procedure. After she was cleaned, Patient #1 defecated again. At this time, Respondent inserted four fingers in Patient #1's rectum and began to dig in her rectum. C.G. told him to stop. But Respondent told C.G. that "you have to get it all out" and continued digging. C.G. told Respondent to stop again

1 and told him not to do that to her patient and that Patient #1 continuously defecates because of the
2 medication she was taking. At this time, Respondent stopped.

3 13. According to Respondent, he pressed on Patient #1's left, lower abdomen in order to
4 express as much fecal matter as possible and to relieve the pressure she was experiencing.

5 14. Later during the same shift, Respondent asked C.G. to help him bathe one of his own
6 patients, Patient #2, who was also having diarrhea. Patient #2 was an 85 year old with a history
7 of cancer, renal failure and numerous gastrointestinal surgeries. Patient #2 was also receiving
8 tube feedings. He was unable to speak because he was on a ventilator.

9 15. When C.G. arrived in Patient #2's room, Patient #2 was lying on his bed completely
10 naked. Respondent did not have the bathing supplies ready. When Respondent left the room to
11 get the bathing supplies, C.G. covered Patient #2 with a sheet. After Respondent returned, they
12 proceeded to clean Patient #2.

13 16. They turned the patient on his right side toward Respondent and C.G. cleaned his left
14 side and changed the linens on that side. They turned the patient on his left side toward C.G. and
15 Respondent started cleaning the patient's right side. When Patient #2 started to defecate,
16 Respondent stuck four fingers in Patient #2's rectum and began to dig with his fingers. C.G.
17 noticed that Patient #2's eyes grew wide. C.G. asked Patient #2 if Respondent was hurting him
18 and Patient #2 nodded yes. C.G. told Respondent to stop because he was hurting his patient.
19 Respondent again said, "You have to get it all out." Respondent kept digging in Patient #2's
20 rectum about four times.

21 17. C.G. told Respondent that she would change places with Respondent and went to the
22 patient's right side of the bed and finished cleaning the patient and changed linens. C.G. applied
23 cream on the patient's bottom and back. They dressed the patient. C.G. picked up the dirty
24 linens, poured out the bath water and helped clean the room.

25 **FIRST CAUSE FOR DISCIPLINE**

26 **(Unprofessional Conduct – Gross Negligence)**

27 18. Respondent is subject to disciplinary action under Code section 2761(a)(1) for gross
28 negligence, as defined in Title 16, California Code of Regulations, section 1442, in that

Respondent's conduct of probing in the rectums of Patients #1 and #2 constituted an extreme departure from the standard of care which, under similar circumstances, would have ordinarily been exercised by a competent registered nurse, as more fully set forth in paragraphs 9-17 and incorporated herein as though set forth in full.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Rectal Probing)

19. Respondent is subject to disciplinary action under Code section 2761(a) for unprofessional conduct in that Respondent used his fingers to probe in the rectums of Patients #1 and #2, as more fully set forth in paragraphs 9-17 and incorporated herein as though set forth in full.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Abdominal Pressure)

20. Respondent is subject to disciplinary action under Code section 2761(a) for unprofessional conduct in that Respondent pressed on the abdomen of Patient #1, who was not his patient, in order to express fecal matter from her when he was unaware of her history or plan of care, as more fully set forth in paragraphs 9-17 and incorporated herein as though set forth in full.

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Leaving Patient Naked)

21. Respondent is subject to disciplinary action under Code section 2761(a) for unprofessional conduct in that Respondent violated Patient #2's privacy by allowing him to remain naked on his bed when Respondent did not have all of the supplies he needed to bathe Patient #2, as more fully set forth in paragraphs 9-17 and incorporated herein as though set forth in full.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 357094, issued to Warren Lester Franklin;

1 2. Ordering Warren Lester Franklin to pay the Board of Registered Nursing the
2 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
3 Professions Code section 125.3; and,

4 3. Taking such other and further action as deemed necessary and proper.
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7 DATED: November 21, 2012



LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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